

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
California-American Water Company
(U210W) for an Order Authorizing the
Transfer of Costs Incurred in 2011 for a
Long-Term Water Supply Project for the
Monterey County District to its Special
Request 1 Surcharge Balancing Account.

Application 12-10-003
(Filed October 2, 2012)

**DECISION ADOPTING A SETTLEMENT ON THE MONTEREY COUNTY
DISTRICT REQUEST 1 SURCHARGE BALANCING ACCOUNT****Summary**

On August 30, 2013, California-American Water Company (CalAm) and the Office of Ratepayer Advocates jointly filed a motion to adopt a settlement addressing the transfer of already incurred 2011 costs for a water supply project for CalAm's Monterey County District to its Special Request 1 Surcharge Balancing Account. This account is authorized to record preconstruction costs for a possible new water supply in Monterey County. This decision adopts the unopposed Settlement Agreement.

This phase of this proceeding, and this decision, have no direct or indirect effects on the immediate safety of CalAm's water supply, its employees, customers, or the public at large.

This proceeding is closed.

1. Background

On October 2, 2012, California-American Water Company (CalAm), as authorized in Decision (D.) 03-09-022 and D.06-12-040, filed Application (A.) 12-10-003 seeking a reasonableness review of, and the transfer to the Special Request 1 Surcharge Balancing Account of, the Coastal Water Project's preconstruction costs incurred in 2011, totaling \$704,052.53. On January 4, 2013, pursuant to a December 13, 2012 ruling by the assigned Administrative Law Judge (Judge or ALJ) and ordering paragraph 2 of D.12-11-031, CalAm filed an amendment to A.12-10-003 that removed \$446,831.56 in legal fees and costs and \$17,193.68 in interest from its application. On March 15, 2013, CalAm filed a supplement to amended A.12-10-003 requesting an additional \$52,002.82 in slant well-related costs, engineering costs, consulting costs, public outreach costs, and interest costs which were originally the subject of CalAm's Advice Letter 932 filing. After incorporating these additional expenses, CalAm's total request reached \$292,030.85.

This settlement is the culmination of a long series of proceedings and decisions which began with A.04-09-019 for a Certificate of Public Convenience and Necessity to construct the Coastal Water Project, a water supply augmentation project, that was to include a desalination facility, aquifer storage and recovery facilities, and transmission facilities to resolve water supply deficits in the company's Monterey service territory. (*See* Motion 2 – 3 for a full recital of the history.)

2. Summary of the Settlement Terms

The Parties have agreed that the Commission should authorize CalAm to transfer \$222,275.35 of costs incurred for prudent services rendered through 2011 from the authorized memorandum account to the Special Request 1 Surcharge

Balancing Account. As set forth in the Settlement Agreement, this amount reflects the removal of costs totaling \$69,755.50. With the exception of \$1,108, plus an interest adjustment, for the cost of legal notices, CalAm may seek recovery of the other charges that relate to legal costs in a future application, pursuant to D.12-11-031.

3. The Settlement and the Record

The record in this proceeding consists of all filed documents and all exhibits received into evidence. The settlement fully contains the terms and agreement between the parties. Of note for future proceedings, Office of Ratepayer Advocates (ORA) and CalAm agree that the memo account should remain open. Ordering paragraph 2 of D.12-11-031, which modified D.12-07-008, specifically states that CalAm may track, in a segregated manner, Regional Desalination Project-related legal costs incurred before and after January 17, 2012. Additionally, the decision also stated that CalAm was not prevented from incurring reasonable costs related to its current water supply application (A.12-04-019) nor did the decision limit the general authorizations CalAm received prior to the selection of the Regional Desalination Project. Moreover, in an August 29, 2012 ruling, the Judge in A.12-04-019 held that CalAm is already authorized to track in the memorandum account certain costs related to the proposed project.

4. Standard of Review

CalAm bears the burden of proof to show that the rates it requests are just and reasonable and the related ratemaking mechanisms are fair.

In order for the Commission to consider any possible proposed settlement in this proceeding as being in the public interest, the Commission must be convinced that the parties had a sound and thorough understanding of the

application, and all of the underlying assumptions and data included in the record. This level of understanding of the application and development of an adequate record is necessary to meet our requirements for considering any settlement.

5. Adopting a Proposed Settlement

As the United States Court of Appeals for the Ninth Circuit has observed, in evaluating a settlement the agreement must stand or fall on its own terms, not compared to some hypothetical result that the negotiators might have achieved, or that some believe should have been achieved:

Settlement is the offspring of compromise; the question we address is not whether the final product could be prettier, smarter or snazzier, but whether it is fair, adequate and free from collusion. (*Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998).

This settlement comes before the Commission before service of ORA's testimony, CalAm's rebuttal, and before any evidentiary hearings. Based upon its analysis ORA was able to agree on a settlement with CalAm. Therefore we must rely on the settlement's factual recital offered by the settling parties of the circumstances that lead us to the findings in today's decision. Based on this recital, which, along with all other filed and served documents, forms our factual record, we find the settlement is consistent with the facts as presented. (Rule 12.1(d).)¹ We find that the parties to the settlement had a sound and thorough understanding of the application, and all of the underlying assumptions and data included in the record and, thus, we can consider the

¹ All references to Rules are to the Commission's Rules of Practice and Procedure, unless otherwise noted.

settlement to be offered by competent and well-prepared parties able to make informed choices in the settlement process.

5.1. Pertinent Commission Rules

Rules specifically address the requirements for adoption of proposed settlements in Rule 12.1 *Proposal of Settlements*, and subject to certain limitations in Rule 12.5 *Adoption Binding, Not Precedential*.² Specifically, Rule 12.1(a) states:

Parties may, by written motion any time after the first prehearing conference and within 30 days after the last day of hearing, propose settlements on the resolution of any material issue of law or fact or on a mutually agreeable outcome to the proceeding. Settlements need not be joined by all parties; however, settlements in applications must be signed by the applicant and, in complaints, by the complainant and defendant.

The motion shall contain a statement of the factual and legal considerations adequate to advise the Commission of the scope of the settlement and of the grounds on which adoption is urged. Resolution shall be limited to the issues in that proceeding and shall not extend to substantive issues which may come before the Commission in other or future proceedings.

When a settlement pertains to a proceeding under a Rate Case Plan or other proceeding in which a comparison exhibit would ordinarily be filed, the motion must be supported by a comparison exhibit indicating the impact of the settlement in relation to the utility's application and, if the participating staff supports the settlement, in relation to the issues staff contested, or would have contested, in a hearing.

Rule 12.1(d) provides that:

The Commission will not approve settlements, whether contested or uncontested, unless the settlement is reasonable

² http://docs.cpuc.ca.gov/published/RULES_PRAC_PROC/105138-11.htm#P623_143939.

in light of the whole record, consistent with law, and in the public interest.

Rule 12.5 limits the future applicability of a settlement:

Commission adoption of a settlement is binding on all parties to the proceeding in which the settlement is proposed. Unless the Commission expressly provides otherwise, such adoption does not constitute approval of, or precedent regarding, any principle or issue in the proceeding or in any future proceeding.

5.2. Required Findings – Rules 12.1(d) and Rule 12.5

Based upon the record of this proceeding we find the parties complied with Rule 12.1(a) by making the appropriate filings and noticing a settlement conference. Based upon our review of the settlement documents we find that they contain a statement of the factual and legal considerations adequate to advise the Commission of the scope of the settlement and of the grounds for its adoption; that the settlement was limited to the issues in this proceeding; and that the settlement included a comparison indicating the impact of the settlement in relation to the utility's application and contested issues raised by ORA in prepared testimony, or would have contested in a hearing. These two findings that the settlement complies with Rule 12.1(a), allow us to conclude, pursuant to Rule 12.1(d), that the settlement is reasonable in light of the whole record, consistent with law, and in the public interest.

Based upon our review of the settlement document we find, pursuant to Rule 12.5, that the proposed settlement would not bind or otherwise impose a precedent in this or any future proceeding.

6. Waiver of Comments on Proposed Decision

Pursuant to Rule 14.6(c)(2), public comments may be waived in an uncontested matter where the decision grants the relief requested.

7. Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and Douglas M. Long is the assigned ALJ in this proceeding.

Findings of Fact

1. There is a full and complete record composed of all filed documents and all exhibits received into evidence, as well as the transcripts of all hearings.
2. The proposed settlement was uncontested.

Settlement

1. The parties to the settlement adopted in this decision had a sound and thorough understanding of the application, and all of the underlying assumptions and data included in the record and could make informed decisions in the settlement process.
2. The adopted settlement is between competent and well-prepared parties who were able to make informed choices in the settlement process.

Conclusions of Law

1. Applicant alone bears the burden of proof to show that its forecasts are reasonable.
2. The proposed settlement is reasonable because it fairly balances intervenor interests.
3. The adopted settlement provides sufficient information for the Commission to discharge its future regulatory obligations.
4. This decision should be effective immediately.
5. The proceeding should be closed.

O R D E R**IT IS ORDERED** that:

1. The August 30, 2013 Motion of California-American Water Company (CalAm) and The Office of Ratepayer Advocates (ORA) to Approve a Settlement in Application 12-10-003 is granted and the settlement is approved. (Attachment I.) CalAm must file a Tier 1 advice letter. CalAm may recover the agreed upon balance of \$222,275.35, which shall include interest accrued at the approved interest rate of 4% from December 31, 2012 – the date of the balance that ORA reviewed – to the time of recovery, which is recoverable in rates as part of Surcharge 1, and which was previously authorized in Decision 06-12-040.
2. California-American Water Company (CalAm) may recover legal costs and interest on the balance carried in the Special Request 1 Surcharge Balancing Account. CalAm may file an application to seek recovery of the following Regional Desalination Project-related legal costs pursuant to the process adopted in Decision (D.) 12-07-008, as modified by D.12-11-031: 1) \$446,831.56, plus \$17,193.68 in interest through September 30, 2012, which were removed from this application pursuant to a Commission ruling in this proceeding; and 2) \$65,761.19, plus interest of \$2,827.98 through December 31, 2012, which were removed during settlement discussions. Nothing in this decision prevents CalAm from tracking and seeking recovery of Regional Desalination Project-related legal costs pursuant to the process adopted in D.12-07-008, as modified by D.12-11-031.
3. Application 12-10-003 is closed.

This order is effective today.

Dated _____, at San Francisco, California.

ATTACHMENT

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

In the Matter of the Application of California-American
Water Company (U 210 W) for an Order Authorizing the
Transfer of Costs Incurred in 2011 for Its Long-Term
Water Supply Solution for the Monterey County District
to Its Special Request 1 Surcharge Balancing Account

Application No. 12-10-003
(Filed October 2, 2012)

**SETTLEMENT AGREEMENT BETWEEN CALIFORNIA-AMERICAN WATER
COMPANY AND THE DIVISION OF RATEPAYER ADVOCATES**

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August 30, 2013

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

In the Matter of the Application of California-American Water Company (U 210 W) for an Order Authorizing the Transfer of Costs Incurred in 2011 for Its Long-Term Water Supply Solution for the Monterey County District to Its Special Request 1 Surcharge Balancing Account

Application No. 12-10-003
(Filed October 2, 2012)

**SETTLEMENT AGREEMENT BETWEEN CALIFORNIA-AMERICAN WATER
COMPANY AND THE DIVISION OF RATEPAYER ADVOCATES**

I. RECITALS

A. On September 20, 2004, California-American Water Company ("California American Water" or "Company") filed Application ("A.") 04-09-019 with the California Public Utilities Commission ("Commission") seeking a Certificate of Public Convenience and Necessity to construct the Coastal Water Project, a water supply augmentation project that includes a desalination facility, aquifer storage and recovery facilities, and transmission facilities to resolve water supply deficits in the Company's Monterey service territory.

B. On December 14, 2006, the Commission issued decision ("D.") 06-12-040, authorizing California American Water to collect a surcharge from Monterey ratepayers to recover preconstruction costs (related to public outreach and other costs) that California American Water incurred through 2005. These expenses had been recorded in a memorandum account established to track the Coastal Water Project's preconstruction costs, subject to reasonableness review.¹ In that decision, the Commission also created a procedure for reviewing the Coastal Water Project's engineering and other preconstruction costs through 2005 and preconstruction costs for 2006 and 2007.²

C. On April 10, 2008, California American Water, as authorized in D.06-12-040, filed application A.08-04-019 seeking reasonableness review of, and the transfer to the Special

¹ D.06-12-040 Ordering Paragraph ("OP") 1, OP 8, and OP 9

² D.06-12-040 OP 13

Request 1 Surcharge balancing account of the preconstruction costs incurred through 2007. In Commission D.08-12-034, the Commission adopted a settlement agreement between California American Water and DRA resolving this application. California American Water and DRA agreed, and the Commission ordered that California American Water shall continue the annual reporting process adopted in D.06-12-040 and may file annual applications to address preconstruction costs for 2008 and subsequent years, if necessary.³

D. On October 2, 2012, California American Water, as authorized in D.03-09-022 and D.06-12-040, filed A.12-10-003 seeking reasonableness review of, and the transfer to the Special Request 1 Surcharge balancing account of, the Coastal Water Project's preconstruction costs incurred in 2011, totaling \$704,052.53.

E. On January 4, 2013, pursuant to a December 13, 2012 ruling by the assigned Administrative Law Judge and ordering paragraph 2 of D.12-11-031, California American Water filed an amendment to A.12-10-003 that removed \$446,831.56 in legal fees and costs and \$17,193.68 in interest from its application.

F. On March 15, 2013, California American Water filed a supplement to amended A.12-10-003 requesting an additional \$52,002.82 in slant well-related costs, engineering costs, consulting costs, public outreach costs, and interest costs which were the subject of California American Water's Advice Letter 932 filing. After incorporating these additional expenses, California American Water's total request was \$292,030.85.

G. On July 2, 2013 DRA issued its audit report of the Company's 2011 Coastal Water Project preconstruction costs.

H. On July 26, 2013, California American Water and DRA met to discuss the open issues in this proceeding.

I. On July 30, 2013, California American Water and DRA met again for discussions regarding settlement.

J. On August 7, 2013, California American Water and DRA met again for settlement

³ D.08-12-034 OP 6; Amended Settlement Agreement to D.08-12-034, p.2.

discussions and reached the agreement described below. This meeting was noticed under Rule 12.1(b) of the Commission Rules of Practice and Procedure.

II. GENERAL

A. Pursuant to Article 12 of the Rules of Practice and Procedure of the California Public Utilities Commission ("Commission"), the Division of Ratepayer Advocates ("DRA"), and California-American Water Company ("California American Water") (collectively, "the Parties"), desiring to avoid the expense, inconvenience and the uncertainty attendant to litigation of the matters in dispute between them, have agreed on the terms of this Settlement Agreement ("Settlement Agreement") which they now submit for approval.

B. Because this Settlement Agreement represents a compromise by them, the Parties have entered into each stipulation contained in the Settlement Agreement on the basis that its approval by the Commission not be construed as an admission or concession by any Party regarding any fact or matter of law in dispute in this proceeding. Furthermore, the Parties intend that the approval of this Settlement Agreement by the Commission not be construed as a precedent or statement of policy of any kind for or against any Party in any current or future proceeding. (Rule 12.5, Commission's Rules on Practice and Procedure.)

C. The Parties agree that no signatory to the Settlement Agreement assumes any personal liability as a result of their agreement. All rights and remedies of the Parties are limited to those available before the Commission.

D. The Parties agree that the Settlement Agreement is an integrated agreement such that if the Commission rejects or modifies any portion of this Settlement Agreement, each party must consent to the Settlement Agreement as modified, or either party may withdraw from the Settlement Agreement.

E. The Parties agree to use their best efforts to obtain Commission approval of the Settlement Agreement. The Parties shall request that the Commission approve the Settlement Agreement without change and find the Settlement Agreement to be reasonable, consistent with

the law, and in the public interest.

F. This Settlement Agreement may be executed in counterparts, each of which shall be deemed an original, and the counterparts together shall constitute one and the same instrument.

III. TRANSFER OF PRE-CONSTRUCTION COSTS TO SPECIAL REQUEST 1 SURCHARGE BALANCING ACCOUNT

A. The Parties agree that the Commission should authorize California American Water to transfer \$222,275.35 of costs incurred for the Coastal Water Project for certain services rendered through 2011 from the authorized memorandum account to the Special Request 1 Surcharge Balancing Account. This amount reflects the removal of costs totaling \$69,755.50, described below.

B. The Parties agree that California American Water's total request for recovery of \$292,030.85 should be reduced by an amount of (a) \$55,691.20 to remove labor costs and overhead for Mr. Anthony J. Cerasuolo that pertain to legal expenses; (b) \$5,336.83 to remove P-Card expenditures for Mr. Anthony J. Cerasuolo for other legal costs; (c) \$4,233.06 to remove P-Card expenditures for Mr. Robert G. MacLean that include additional legal costs; (d) \$500.10 to remove a Watson Consulting invoice for legal costs; (e) \$1,108.13 to adjust the cost of legal notices; and (f) \$2,886.18 to adjust the interest recovered based on reductions (a) – (e).

C. The Parties agree that California American Water will not seek recovery for the \$1,108.13 plus interest adjustment for the cost of legal notices. California American Water may seek recovery of the other charges relating to legal costs in a future application pursuant to D.12-11-031.

D. The Parties agree that, in this proceeding, California American Water provided DRA with an inaccurate response to a data request question.⁴ California American Water provided revised data request responses to correct this inaccuracy. California American Water has stated that this inaccuracy was due to an invoice processing mistake and a very rare occurrence in its accounts payable/invoice processing system. As part of California American Water's Business

⁴ See DRA's Audit Report on California American Water Company's Monterey Long-Term Water Supply 2011 Preconstruction Costs, pp. 11-12.

Transformation Program, California American Water is currently upgrading its business and operations systems to SAP, which should minimize the chances of a similar invoice processing mistake from occurring. California American Water has now provided an accurate response to this data request. California American Water will make every effort to avoid the occurrence of this situation in the future.

E. The Parties agree that nothing in this agreement is intended to supersede prior Commission decisions or prior agreements between DRA and California American Water.

F. The Parties have reviewed the documents provided by California American Water. The Parties have found that the already-incurred costs that California American Water has sought for recovery, as adjusted, are reasonable.

G. The Parties agree that this agreement resolves all of the outstanding issues in this proceeding.

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August 29, 2013

DIVISION OF RATEPAYER ADVOCATES

By: Joseph P. Como, Acting Director

August 27, 2013

CALIFORNIA-AMERICAN WATER COMPANY

By: Robert MacLean, President

August 28 2013

DIVISION OF RATEPAYER ADVOCATES

By: 
Joseph P. Como, Acting Director

August 29 2013

CALIFORNIA-AMERICAN WATER COMPANY

By: _____
Robert MacLean, President